IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 4216 of 2007(B)

AGAINST THE ORDER IN EP 374/2001 IN OS.158/1999 of I ADDL.SUB COURT, KOZHIKODE

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PETITIONERS:

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1. **MR.RAJESH, S/O.RAGHAVAN NAIR, VETTYERI HOUSE, EDAKKAD P.O., KOZHIKODE-5.**

2. **MR.T.P.JAYACHANDRAN, S/O. T.P.CHANDRAN, ILLATH HOUSE, EDAKKAD P.O., KOZHIKODE-5.**

3. **MR.K.PREMKUMAR, S/O.P.VELAYUDHAN NAIR, PRARTHANA, KARAPARAMBU, KOZHIKODE-10.**

BY ADV. SRI.JOSEPH A.VADAKKEL
SRI.GEORGE KARITHANAM VARGHESE
SRI.JOSE KURIAKOSE (VILANGATTIL)

RESPONDENT:

THE FEDERAL BANK LTD., BRANCH OFFICE PUTHIYARA, CALICUT, KALATHINJUNNU AMSOM AND DESOM OF KOZHIKODE TALUK.

BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.4216/2007 B

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE JUDGMENT IN C.R.P.26/2004 THE HON'BLE HIGH COURT OF KERALA.**

EXT.P2: **COPY OF THE E.A.762/2006 IN E.P.374/2001 IN O.S.158/99 ON THE FILE OF 1ST ADDL.SUB COURT, KOZHIKODE.**

EXT.P3: **COPY OF THE ORDER DTD. 19/08/2006 IN E.A.762/2006 IN E.P.374/2001 IN O.S.158/99 ON THE FILE OF 1ST ADDL.SUB COURT, KOZHIKODE.**

/TRUE COPY/

KSS

M.N.KRISHNAN, J.

WP(C)No.4216 OF 2007 B

Dated this the 28th May, 2007.

JUDGMENT

This writ petition is filed seeking to quash Ext.P3. Ext.P3 is an order passed on Ext.P2. Ext.P2 is an application filed by the judgment debtors to recall the arrest warrant and permit them to adduce evidence in support their contentions.

2. Heard the counsel.

3. On an earlier occasion the judgment debtors came up for revision before this Court as C.R.P.26/2004. This Court found that there was no sufficient evidence to issue warrant of arrest and therefore, set aside the order and directed the parties to adduce fresh evidence before the executing court. It appears that after the matter went back there was again laches on the part of the parties to adduce further evidence. It is submitted by learned counsel for the revision petitioners that their clients had adduced evidence. But unfortunately on the date of hearing they could not attend the court and therefore the court ordered that the decree holder has proved that the judgment debtors are having properties and ordered arrest. According to them no opportunity has been given to them to substantiate their contentions and there was no proper

evidence let in by the decree holder to invite such a finding. There appears to be some force in the contention of the learned counsel for the writ petitioners. Therefore, in the interest of justice, an opportunity can be given to the writ petitioners to adduce evidence in support of their contentions that they have no means. Therefore, the order under challenge as well as the order based on which Ext.P2 application is set aside and the matter is remanded back to the trial court for fresh disposal after affording opportunities to both the decree holder as well as the judgment debtors to adduce evidence in support of their respective contentions.

4. The parties shall appear before the executing court on 29.6.2007 and it is made clear that both the parties have to co-operate fully with the executing court and the matter be disposed of within a period of two months from the date of first appearance of the parties.

Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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